

CO-LOCATION OF PRIVATE TELECOMMUNICATIONS
FACILITIES
APPLICATION PACKAGE

MORGAN COUNTY, WEST VIRGINIA

- POLICY
- LEASING PROCESS
- APPLICATION
- DRAFT AGREEMENT

POLICY FOR THE CO-LOCATION OF PRIVATE TELECOMMUNICATIONS FACILITIES ON COUNTY PROPERTY

SUMMARY

As a result of the Telecommunications Act of 1996 (the "Act"), the Morgan County Commission has found it necessary and appropriate to develop a Policy for the Co-Location of Private Telecommunications Facilities on County property to allow orderly compliance with the Act as well as to promote the public good.

This policy is predicated on the following considerations:

1. Minimize proliferation of towers and obstructions.
2. Minimize negative impacts on County Property
 - a. Recognize impact on future County capacity needs.
 - b. Recognize impact on future County space needs.
3. Minimize impact on County neighbors.
4. Be fairly compensated for use of County property.
 - a. Use of County Tower space
 - b. Spectrum Management Framework
 - c. Application fee (non-refundable)
5. Recognition of prior contractual obligations.
6. Sound engineering practices.
 - a. County review of plans, drawings, designs, etc.
 - b. Re-location for county purposes
 - c. Adherence to existing permit requirements and procedures.
7. Balance the aforementioned points with maximizing opportunities for expanding telecommunications service to the public.

7. Notwithstanding that the County may determine that a desired co-location is practical, it shall be understood by all parties that no action of the County releases a requesting party from compliance with the provisions of any existing Federal, State or local regulations relating to the construction of such co-location.

Minimize proliferation of towers and obstructions

It is the County's desire to keep the number of towers to a minimum. The sharing of facilities either between private entities and the County or among several private entities is highly encouraged. This includes consolidation of facilities at singular sites, construction of common infrastructure and sharing of towers.

Minimize negative impacts on County operations

In all cases it is necessary to recognize that County capital has been used to build a communication system necessary for the operation of the County. Sufficient capacity will be prudently reserved to meet the reasonable future needs of the County. Where capacity exists in excess of that prudently reserved to meet the reasonable future needs of the county that capacity will be considered available for lease to private entities so that the County can realize a partial return on its capital investment.

Minimize negative impacts on County neighbors

When at all possible, the County will take appropriate steps to ensure that negative impacts to its neighbors are minimized. These steps should include coordination of construction activities and the requirement that any private entities obtain applicable local permits prior to co-location on County facilities.

The County should be fairly compensated for use of its property

The Act allows the County to be fairly compensated for the use of its property. Consistent with past practices and current market conditions, the County shall always be fairly compensated for the use of its property.

Spectrum Management Framework

In instances where a Broadband Wireless Internet carrier is issued a site application, and submits said application, a spread spectrum band is allocated exclusively for their use at a given tower site. This framework ensures that broadband carriers are equitably allowed to co-locate on County towers with minimal concerns of interference.

Any spectrums reserved within this framework will be held for a maximum of three (3) months prior to executing a lease. After that time, if a lease agreement has not been executed, then the application fee is forfeited and the spectrums become available.

The Spectrum Management Framework may be modified from time to time by the County.

Application Fees & Leasing Rates

Application Fee –

A one-time application fee of shall be required at the time of formal application by a private entity for co-location. This fee shall be non-fundable and will be considered to cover the administrative and engineering costs incurred by the County in the review of the application. The application fee is a separate charge and shall not be applied against future fees that may become due and payable from the private entity to the County. The following is an application fee schedule that may be modified from time to time by the County.

FACILITY LEASING PROCESS

1. INITIAL CONTACT

Wireless carriers or their representatives initiate contact with the Morgan County Commission regarding a site that will be of value to their system. This level of contact is casual and need not be in writing. The proposed site location will be discussed and a general determination will be made by the Morgan County Commission as to whether a wireless carrier should proceed with plans. At this time, the Morgan County Commission documents the contact and, if applicable, opens a new project file.

If the wireless carrier does not already have a copy of the "Policy for the Co-Location of Private Telecommunications Facilities on County Property", it will be made available to them.

The wireless carrier is informed/reminded of the Morgan County Commission's reservation of the top 20' of each tower.

2. OPTIONAL SITE WALK

After initial contact is made with the Morgan County Commission a site walk is recommended between Morgan County Communications Director and representatives of the wireless carrier, to further explore project feasibility.

3. LEASE NEGOTIATIONS

After confirming their interest the wireless carrier is referred to the Morgan County Commission's Legal Department. Ideally, lease discussions should take place concurrently with Step 4.

4. SITE APPLICATION FORM ISSUED

The Morgan County Commission issues a copy of the Site Application Form.

5. ANTENNA HEIGHT ASSIGNMENT

At this time, concurrently with the issuance of the Site Application Form, a mutually agreeable tower height and azimuth (if applicable) is agreed upon. As per Morgan County Commission policy, the top 20' of each tower is reserved for in-house future use. Additionally, there must be a 10' separation between the proposed wireless carrier's antenna(s) and any other antenna on the tower. These requirements may be waived at the discretion of the Morgan County Commission.

6. TOWER STRUCTURE REVIEW

Immediately after receiving antenna height assignment the wireless carrier should submit all tower (antenna and line) details for structural review by a certified engineering firm for structural review.

If the structural report fails, there are two options. First, the wireless carrier may have a tower modification performed by a certified structure engineering firm, to bring tower to acceptable limits, or they may opt to re-submit their request to re-locate to a

11. APPROVAL OF ENGINEERING PLANS

With a complete, approved engineering plan, the Morgan County Commission notifies the wireless carrier that all issues have been adequately addressed.

12. LEASE NEGOTIATIONS ARE COMPLETED

The Morgan County Legal Department notifies the Morgan County Commission that lease details have been finalized.

13. MORGAN COUNTY COMMISSION MEETING

The wireless carrier's proposal is put before the Morgan County Commission. If approved, then proceed to Step #14. If the proposal is denied, then either return to Step #9 or issue a Written Notice of Denial (as detailed in Step #9.)

14. NOTICE TO PROCEED (NTP) ISSUED

The Morgan County Commission issues the formal approval to commence construction. There should not be any pending lease (Step # 12) or insurance (Step #7) issues. If there are, then the NTP will be delayed until their completion.

15. SITEWORK

Installation crews begin site work, which is coordinated with the Morgan County Commission staff.

The Morgan County Commission maintains that each third party user is entitled to perform their site work within their own guidelines and needs. Nevertheless, if there are any broad scoped site installation issues that impact the Morgan County Commission or other third parties' on-site (safety, aesthetics) then these must be reasonably addressed.

Upon completion of site work, the Morgan County Commission will document the project and close any project files created in Step #1.

16. FINAL AS-BUILTS

The engineering plans submitted in Step #8 should be amended as needed during construction. Once work has been completed, any changes should be addressed in final record drawings, which are forwarded to the Morgan County Commission for permanent filing.

TELECOMMUNICATIONS SITE APPLICATION FORM

Site Name: _____

Licensor: Morgan County Commission
77 Fairfax Street, Rm 101
Berkeley Springs, WV 25411

Attention: Morgan County Commission, Communications Director
Phone: 304-258-8540
Fax: 304-258-7305

Licensee: _____

Attention: _____

Phone: _____

Fax: _____

_____ requests approval on this
_____ day of 20_____ to license a portion of Licensor's Towers
and Lands together with obtaining a right of access to install associated utilities within
the portion of the Licensor's towers and Licensor's Lands actually defined above. Attached
with this application form please find the pre-determined site application fee, payable to

_____ in the amount of \$ _____

Submitted by : _____

Title: _____

Attest: _____

Morgan County, WV
Tower Site Agreement

Lessor leases to Lessee, the site described below (check appropriate boxes)

- Land consisting of approximately _____ square feet upon which Lessee will install their equipment sheltering structure
- Tower Antenna Space- see Attachment A for specifications and wind loading
- Space required for cable runs to connect Facility equipment and antennas

In the location(s) (Site) shown on Exhibit A, together with non-exclusive easement for reasonable access thereto and to the appropriate, the discretion of Lessee, source of electric and telephone facilities. The site will be used by Lessee for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, communications service system facility, including without limitation, antenna equipment, cable wiring, back-up power sources (including generators and fuel storage tanks), related fixtures and if applicable to the Site, an antenna structure. Lessee will use the Site in a manner which will not unreasonably disturb the occupancy of Lessor's other tenants. Lessee will have unrestricted access to the Site 24 hours per day, 7 days per week.

1. **Term.** The term of this Agreement (the "initial Term") is five (5) years, commencing on date both Lessee and Lessor have executed this Agreement. This Agreement will automatically renew for three (3) five (5) year terms unless either party indicates its intention to terminate in writing at least 90 days prior to lease expiration. Lessee will provide notice of intent to renew prior to expirations of this agreement. Lack of notification is assumed to be intent of the Lessee not to pursue renewal.

2. **Rent.** Rent (as hereinafter defined) will commence upon the Construction start date and/or installation of Lessee's Antenna Facilities, (the "Rent Commencement Date"). Thereafter, the annual rent of \$ _____ will be paid in equal monthly installments in advance. Rent for each Renewal Term will be the annual rent in effect for the final year of the initial Term or prior renewals Term, as the case may be, increased by Three percent (3 %). Rent payments will be sent to the address beneath Lessor's signature or via electronic transfer to the Lessor's bank account as directed by the Lessor. All of Lessee's monetary obligations set forth in this Agreement are conditioned upon Lessee's receipt of an accurate and executed W-9 Form from Lessor.

3. **Title and Quiet Possession.** Lessor represents and agrees (a) that it is the Lessor of the Site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) that Lessee is entitled to access to the Site at all times and to the quiet possession of the Site throughout the initial Term and each Renewal Term so long as Lessee is not in default beyond the expiration of any cure period; (e) that Lessor shall not have unsupervised access to the Site or to the equipment; and (f) that Lessor will upon sale or transfer of the underlying property, provide an assignment letter to Lessee that instructs Lessee to make future rent payments to the transferee. Lessor further agrees to defend, indemnify and assume all liability for failure to provide Lessee with proper transfer information or required documentation pertaining to subsequent Lessor.

4. **Assignment/Subletting.** Lessee shall not have the right to sublease and/or assign its rights under this Agreement without notice to and consent of Lessor.

13. **Termination.** Lessee may terminate this Agreement at any time by 60 day notice to Lessor without further liability if Lessor does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority, quasi-governmental authority or any easements required from any third party to operate the installed equipment, or if any such approval is canceled, expires or is withdrawn or terminated, or if Lessor fails to have proper Lessor ship of the Site or authority to enter into this Agreement, or if Lessee, for any other reason **including** technical, regulatory and business reasons, in its sole discretion, determines to terminate this Agreement. Upon termination, all prepaid rent will be retained by Lessor unless such termination is due to Lessor's failure of proper Lessor ship or authority, or such termination is a result of Lessor's default.

14. **Default.** If either party is in default under this Agreement for a period of (a) 15 days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) 30 days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such 30-day period and proceeds with due diligence to fully cure the default.

15. **Indemnity.** Lessor and Lessee each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the Lessor ship, use and/or occupancy of the Site by the indemnifying party. This indemnity does not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party. The indemnity obligations under this Paragraph will survive termination of this Agreement.

16. **Hazardous Substances.** Lessor represents that it has no knowledge of any substance, chemical or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee will not introduce or use any such substance on the Site in violation of any applicable law.

17. **Subordination and Non-Disturbance.** This Agreement is subordinate to any mortgage or deed of trust now of record against the Site. However, promptly after the Agreement is fully executed, Lessor will use diligent efforts to obtain a non-disturbance agreement reasonably acceptable to Lessee from the holder of any such mortgage or deed of trust.

18. **Taxes.** Lessee will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its use of the communications facility on the Site. Lessee will pay to Lessor any increase in real property taxes attributable solely to any improvements to the Site made by Lessee within 60 days after receipt of satisfactory documentation indicating calculation of Lessee's share of such real estate taxes and payment of the real estate taxes by Lessor. Lessor will pay when due all other real estate taxes and assessments attributable to the property of Lessor of which the Site is a part and will provide Lessee with proof of such payments.

19. **Insurance.** Lessee will procure and maintain commercial general liability insurance, with limits of not less than One Million Dollars combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be furnished to Lessor within 30 days of written request. Such policy will provide that cancellation will not occur without at least 15 days prior written notice to Lessor. Each party hereby waives its right of recovery against the other for any property loss or damage covered by any insurance policies maintained by the waiving party.

and expenses from the non-prevailing party.

23. **Non-Binding Until Fully Executed.** This Agreement is for discussion purposes only and does not constitute a formal offer by either party. This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.

24. **Authority.** Each party hereby represents and warrants to the other that the undersigned person is duly authorized to execute this Lease Agreement by and on behalf of such party.

The following Exhibits are attached to and made a part of this Agreement: Exhibits A (Site Description), and B (Memorandum of Site Agreement)

EXHIBIT A: Site Description

Site situated in the city of _____, County of Morgan, State of WV

INSERT SURVEY DATA HERE

Sketch of Site: To be added once drawings are approved and signed off by Lessor:

Note: Lessor and Lessee may, at Lessee's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site. Use this Exhibit A for Tower Site Agreement, Memorandum of Tower Site Agreement, Option Agreement and Memorandum of Option Agreement.

EXHIBIT B: Memorandum of Site Agreement

This memorandum evidences that a lease was made and entered into by a written Tower Site Agreement dated _____ between the County of Morgan and _____.

Such Agreement provides in part that Lessor leases to Lessee a certain site locate at _____ within the property of Lessor which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of one year commencing on _____.
(Date)

WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

LESSOR:
Morgan County Commission
77 Fairfax Street, Rm 101
Berkeley Springs, WV 25411

By the direction of the President of the Morgan County Commission and approved in a regularly scheduled meeting.

Bradley J. Close, President
Morgan County Commission

_____ Date _____